

State of California

Public Utilities Commission
San Francisco

M E M O R A N D U M

Date : January 19, 2006/February 14, 2006
(Note: This memorandum is identical to the one distributed on January 19, 2006, except for a new section below describing the nature of the “Proposed Comments” in more detail)

To : The Commission
(Meeting of February 16, 2006)

From : Christopher Witteman, PU Counsel IV

Subject : Staff Seeks Authority to Comment on Application of Rural LECs for Review of FCC Ruling re LEC Obligations to Execute PIC Change Requests with Incorrect Information (CC Docket No. 94-129)

RECOMMENDATION: Staff requests permission to file comments in the FCC docket for the Rural LECs’¹ Application for Review of the FCC’s June 9, 2005 Declaratory Ruling, denying the LECs’ Petition with Respect to Obligation to Execute PIC Change Requests with Incorrect Subscriber Information. In addition staff requests that a Commissioner or Commissioners be assigned to oversee the filing these comments.

A PIC is a primary interexchange carrier, and a customer selects a PIC when signing up for telephone service. In the case of a bundled offering, the customer often chooses a PIC which is the local exchange carrier’s (LEC’s) long-distance affiliate.² Staff is concerned with cases in which the customer selects a PIC other than the LEC’s affiliate, often after receiving a telemarketing call from a competing long-distance carrier. Staff recommends filing comments describing the CPUC’s experience in enforcement cases where non-

¹ The Rural Local Exchange Carriers (LECs) are a consortium of approximately 38 smaller LECs throughout the country, represented by David Cosson at Kraskin, Moorman & Cosson, in Washington DC.

² Such bundled service may be one reason that slamming numbers are generally trending down (although complaints about some competing carriers, for example Clear World, are again edging upward). One area where this improving trend may not hold sway is in the Rural LECs’ market, as these smaller LECs are more often at arm’s length from IXC (long-distance interexchange carriers) than in the urban centers where the consolidation of the large LECs (e.g., SBC) with the large IXCs (e.g. AT&T) is moving ahead. Where such bundled service is an attractive market offering, there is less reason to expect marketing abuse and slamming in the marketing of a separate PIC service.

subscribers have authorized PIC changes to the subscriber's telephone service³ so that the FCC will have this information before it as it reconsiders its ruling. The PIC change process is embedded in FCC rules and carrier practices, but Staff believes it has a direct affect on consumers and, as presently configured, may enable consumer fraud.

THE PETITION: The Rural LECs' petition is modest. The Rural LECs, and LECs generally, are the "executing carriers," i.e., they execute the PIC change orders submitted by the IXC's (inter-exchange carriers, or "submitting carriers"). The LECs asked the FCC for permission to reject PIC⁴ change orders when the name listed on the submitted order was neither that of the subscriber nor of a designated agent of the subscriber, as listed in the LEC's records. The Rural LECs, and LECs generally, reject PIC change orders from submitting carriers for other reasons, such as where the LEC's records show there is a PIC freeze on the line, or that the submitting carrier already services the line, or other incompatibility between the submitted order and the LEC's records. The FCC, however, denied the Rural LECs' request here, finding that their proposal would essentially duplicate the verification of subscriber identity and intent already performed by the submitting carrier⁵ at or shortly after the time of sale, and that "the anti-competitive effects of reverification outweighed the potential benefits."⁶

THE PROBLEM: Staff's experience in enforcement is that there are often problems with subscriber verification where the PIC change order is obtained after a telemarketing sales pitch. We have seen repeated instances where the telemarketer coaches the person on the phone to answer "yes" to the verification questions, including verification that the person is either the subscriber *or authorized by the subscriber to change carriers for the subscriber*. The "submitting carrier" (usually some sort of long-distance reseller, often just a telemarketing organization with a utility license) may not care whether the voice on the phone is that of the subscriber, someone actually authorized by the subscriber, or just

³ The Commission several times has addressed the problem of the non-subscriber authorization which the subscriber later contests. See, e.g., *Investigation of Communication TeleSystems (CTS)* (1997) 72 CPUC2d 621, 635-36; *Investigation of Qwest* (2001), D.02-10-059, Slip Op. at 10, 17. In these decisions, the Commission relied on agency law in finding that the assertions of someone other than the subscriber were insufficient to show the subscriber's intent when the subscriber denies that this other party was authorized to change service (i.e., when the principal denies the agency of the other party).

⁴ A PIC change order goes from a submitting carrier to the executing carrier (usually a LEC), every time a customer requests a change in long distance or intra-LATA service. The LEC actually executes the PIC change, i.e., routes the customer's long-distance calls to the new submitting carrier.

⁵ This verification is actually performed by a reputedly independent "third party verifier" hired by the carrier. The inherent conflict of interest for the third party verifier is also reflected in the fact that many verification scripts are actually written by the carrier.

⁶ Declaratory Ruling in CC Docket No. 94-129 (*In the Matter of Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996*), DA 05-1618, released June 9, 2005. Technically speaking, the executing carrier or LEC consulting its own records cannot be considered a verification (or re-verification) as that term is used in 47 CFR 64.1120(c) – the four methods of verification listed there each involve some interaction with the subscriber at the time of the PIC change order.

a casual visitor to the house. Ten years of slamming enforcement have demonstrated that telemarketers often focus on Spanish-speaking households where there are many related and unrelated people in the house, and where unauthorized individuals will often succumb to aggressive telemarketing.⁷ The CPUC's proposed comments would document this problem to the extent reflected in Commission Decisions.

PROPOSED COMMENTS: Staff proposes filing *ex parte* comments⁸ which make the following points and recommendations to the FCC, which stop short of suggesting that the Rural LECs' Petition be granted:

1. CPUC Staff has encountered the problem described by the Rural LECs, as described above;⁹
2. CPUC agrees with NASUCA's comments that the FCC does not yet have a sufficient factual record on which to decide the Rural LECs' Petition (the FCC's Declaratory Ruling, which the LECs here ask be reviewed, was issued without public comment or hearings). The FCC could usefully gather the following information:
 - a. How the RLECs (and LECs generally) receive PIC change orders from IXCs and resellers, what information is on the CARE (customer automated record exchange) or other system used, is the person authorizing the change is identified in addition to the subscriber, and similar questions;
 - b. How many PIC change orders contain authorizing names different from the subscribers? How many later result in PIC disputes or slamming allegations? Is the PIC dispute rate for non-subscriber initiated changes greater than when the subscriber initiates?
 - c. Do the RLECs, and LECs generally, have in place mechanisms whereby the subscriber can quickly authorize a spouse, family member or third party to make changes in his or her home service? Do the RLECs, and LECs generally, have in place mechanisms allowing for the quick resubmission and/or correction of rejected orders? Are there other mechanisms in place to prevent anti-competitive conduct by the RLECs, and LECs generally?

⁷ As the Commission noted in *Qwest, supra*, "The slamming rate for Spanish and Asian preferred language residential customers for 1999 and 2000 was consistently higher than the rate for English language preferred customers ... slamming activities have a disproportionate impact on ethnic communities."

⁸ February 16, 2006 is deadline for formal reply comments.

⁹ The FCC has noted that "States have valuable insight into the slamming problems experienced by consumers." Third Report and Order, 15 FCC Rcd 15996; 2000 FCC LEXIS 4269; 21 Comm. Reg. (P & F) 1179. In the Interim, Iowa and NASUCA have filed comments supporting the Rural LECs.

3. Any grant or partial grant of the Rural LECs' Petition should be conditioned on there being in place sufficient safeguards against anti-competitive conduct on the part of the RLECs and LECs generally.

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